

William Craven  
FAS East Precinct Parking 12<sup>th</sup> Ave Arts ATT 7  
August 16, 2012  
Version #1

## Attachment 7 FAS East Precinct Parking 12<sup>th</sup> Avenue Arts

## COMPLETION GUARANTY

THIS COMPLETION GUARANTY ("Guaranty") made as of \_\_\_\_\_, 2012, by CAPITOL HILL HOUSING IMPROVEMENT PROGRAM, a Washington public corporation ("Guarantor") to and for the benefit of THE CITY OF SEATTLE, a Washington municipal corporation, its successors and assigns (the "City").

## RECITALS

A. Guarantor is a public corporation created by the City to assist homeowners, property owners, residential tenants and residents of the Capitol Hill community in preserving, improving and restoring the quality of their homes, property and neighborhood, and to provide additional housing, cultural, social and economic opportunities and facilities primarily in the Capitol Hill community. Guarantor organized CH Development Association ("CHDA") and Twelfth Avenue Arts Associates (the "QALICB"), both of which are Washington nonprofit corporations, to support Guarantor's governmental activities. Guarantor is the sole member of CHDA and the QALICB. Guarantor also formed Twelfth Avenue Arts Master Tenant LLC (the "Master Tenant"), a Washington limited liability company of which Guarantor is the [managing member] [sole member].

B. Pursuant to that certain "Condominium Declaration for 12<sup>th</sup> Avenue Arts, a condominium," dated \_\_\_\_\_, 2012 and filed with the King County Recorder under Recorder's No. \_\_\_\_\_ (the "Declaration"), and the survey map and plans filed with the King County Recorder under Recorder's No. \_\_\_\_\_, the City created 12<sup>th</sup> Avenue Arts (the "Condominium"), a condominium consisting of a "Commercial Unit," a "Garage Unit" and a "Housing Unit" (as such terms are defined in the Declaration).

C. Guarantor formed Twelfth Avenue Arts Housing LLLP (the "Housing Partnership"), a Washington limited liability limited partnership, to acquire, construct, own and operate the Housing Unit as a multi-unit rental housing project for low-income persons. Guarantor is the Housing Partnership's sole general partner, and has been retained by the Housing Partnership to provide development services with respect to the construction of the Housing Unit. A portion of the development costs pertaining to the Housing Unit will be financed through a \$\_\_\_\_\_ loan from the City, acting through the City's Office of Housing.

D. On the date hereof, and pursuant to a Real Property Purchase and Sale Agreement dated \_\_\_\_\_, 2012 (the "Purchase and Sale Agreement"), between CHDA and the City, the City sold the Housing Unit and the Commercial Unit to CHDA. CHDA subsequently sold the Housing Unit to the Housing Partnership and the Commercial Unit to the QALICB. The QALICB has leased the Commercial Unit to the Master Tenant, and the Master Tenant has subleased a portion of the Commercial Unit to Guarantor for use by Guarantor as community

space and Guarantor's main offices. A portion of the development costs pertaining to the Commercial Unit will be financed through a \$\_\_\_\_\_ loan from the City, acting through the City's Office of Economic Development.

E. On the date hereof, the City leased the Garage Unit to CHDA pursuant to a Ground Lease Agreement dated \_\_\_\_\_, 2012 (the "Ground Lease"); CHDA subleased its interests in the Ground Lease to the QALICB pursuant to that certain Ground Sublease Agreement dated \_\_\_\_\_, 2012; the QALICB leased the Garage Unit to the Master Tenant pursuant to a Master Lease Agreement dated \_\_\_\_\_, 2012; and the Master Tenant subleased the Garage Unit to the City pursuant to a Sublease Agreement dated \_\_\_\_\_, 2012 (the "Sublease"). The Ground Lease requires, as part of the consideration for the Ground Lease, that CDHA construct, or cause to be constructed, improvements which shall be used for the parking of authorized City of Seattle vehicles.

F. Guarantor has submitted to the City's Office of Housing, Office of Economic Development, and the Department of Finance and Administrative Services, plans and specifications dated \_\_\_\_\_, 2012 (the "Plans and Specifications") for the construction of the improvements that, when completed, will comprise the Housing Unit, the Commercial Unit and the Garage Unit.

G. On the date hereof, the QALICB borrowed money from KeyBank National Association, [Key CDC Subsidiary CDE], and NDC New Markets Investments \_\_\_\_\_, LLC, to finance its acquisition and construction of the Commercial Unit and the Garage Unit. Those loans are expected to satisfy requirements of the federal new markets tax credit program. RCW 35.21.735(8) provides that "[a]ll cities, towns, counties, public corporations, and port districts may create partnerships and limited liability companies and enter into agreements with public or private entities, including partnership agreements and limited liability company agreements, to implement within their boundaries the federal new markets tax credit program established by the community renewal tax relief act of 2000 (26 U.S.C. Sec. 45D) or its successor statute." The Condominium is located within the City's boundaries and Guarantor's area of operations.

H. Guarantor will derive material financial benefits from the transactions described in the foregoing Recitals. The City has relied on the statements and agreements contained herein in agreeing to transfer the Housing Unit, the Commercial Unit and the Garage Unit to CDHA, and to sublease the Garage Unit from the Master Tenant. The execution and delivery of this Guaranty by Guarantor is a condition precedent to the transfer of such Condominium units and the subleasing of the Garage Unit.

## AGREEMENT

NOW, THEREFORE, intending to be legally bound, Guarantor, in consideration of the matters described in the foregoing Recitals, which Recitals are incorporated herein and made a part hereof, and for other good and valuable consideration the receipt and sufficiency of which

are acknowledged, hereby covenant and agree for the benefit of the City and its successors and assigns as follows:

1. Guarantor, absolutely, unconditionally, and irrevocably guarantees:

(a) the full, complete and punctual completion of the construction, installation, and equipping of the improvements described in the Plans and Specifications (collectively, the "Construction"), including without limitation, all additions, alterations, and improvements thereto or replacements thereof and all appurtenant fixtures, machinery, and equipment installed therein, free of any claim for mechanics', materialmen's or any other liens, and in accordance with (1) all applicable laws, and (2) the Plans and Specifications. Without limiting the foregoing, Guarantor's obligations under this subsection (a), include the following:

(i) To perform, complete and pay for (or cause to be performed, completed and paid for) the Construction and to pay all costs of said Construction (including any and all cost overruns) and all other costs associated therewith (including, without limitation, the costs of any architects' and engineers' fees), if Guarantor, CHDA, the Housing Partnership, the QALICB, the Maters Tenant or any other party responsible therefor shall fail to perform, complete or pay for such work;

(ii) If any mechanics' or materialmen's liens should be filed, or should attach, with respect to Garage Unit, to immediately cause the removal of such lien, or post security against the consequences of the possible foreclosure thereof;

(iii) If any chattel mortgages, conditional vendor's liens or any liens, encumbrances or security interests whatsoever should be filed, or should attach, with respect to the personal property, fixtures, attachments and equipment delivered upon the Garage Unit, attached to the Garage Unit or used in connection with the construction of the Garage Unit, to immediately cause the removal of such lien(s) or post security against the consequences of their possible foreclosure and procure a title policy insuring the City against the consequences of the foreclosure or enforcement of such lien(s); and

(iv) To protect, indemnify, defend and hold the City and its officials and employees harmless from and against any and all actual or potential claims, liabilities, damages (direct or indirect), losses, fines, penalties, judgments, awards, costs and expenses (including, without limitation, reasonable attorney fees and costs and expenses of investigation) which arise out of or relate in any way to the Construction or the financing by the Housing Partnership or the QALICB of the improvements comprising the Housing Unit, the Commercial Unit or the Garage Unit.

(b) the full and prompt payment of any Enforcement Costs (as hereinafter defined in Section 5 hereof).

All obligations described in subsections (a) and (b) of this Section 1 are referred to herein as the “Obligations.”

2. Guarantor does hereby (a) waive notice of acceptance of this Guaranty by the City and any and all notices and demands of every kind which may be required to be given by any statute, rule or law, (b) agree to refrain from asserting, until after repayment in full of any amounts due to the City hereunder, any defense, right of set-off or other claim which Guarantor may have against the City, CHDA, the Housing Partnership, the QALICB or the Master Tenant, (c) waive presentment for payment, demand for payment, notice of nonpayment or dishonor, protest and notice of protest, diligence in collection and any and all formalities which otherwise might be legally required to charge Guarantor with liability, and (d) waive any failure by the City to inform Guarantor of any facts the City may now or hereafter know about the Construction, it being understood and agreed that the City has no duty so to inform and that Guarantor is fully responsible for being and remaining informed by CHDA, the Housing Partnership, the QALICB and the Master Tenant of all circumstances bearing on the risk of nonperformance of the Obligations. No modification or waiver of any of the provisions of this Guaranty shall be binding upon the City except as expressly set forth in a writing duly signed and delivered by the City.

3. Guarantor further agrees that Guarantor’s liability as guarantor shall not be impaired or affected by the City’s failure or election not to pursue any other remedies it may have against Guarantor, CHDA, the Housing Partnership, the QALICB or the Master Tenant, or by any change to or modification of the Purchase and Sale Agreement, the Declaration, the Ground Lease or the Sublease, it being the intent hereof that Guarantor shall remain liable for the performance of the Obligations notwithstanding any act or thing which might otherwise operate as a legal or equitable discharge of a surety. Guarantor further understands and agrees that the City may at any time enter into agreements with CHDA, the Housing Partnership, the QALICB or the Master Tenant to amend and modify the Purchase and Sale Agreement, the Declaration, the Ground Lease or the Sublease, and may waive or release any provision or provisions of the Purchase and Sale Agreement, the Declaration, the Ground Lease or the Sublease, and, with reference to such instruments, may make and enter into any such agreement or agreements as the City may deem proper and desirable, without in any manner impairing or affecting this Guaranty or any of the City’s rights hereunder or Guarantor’s Obligations.

4. This is an absolute, present and continuing guaranty of performance and completion and not of collection. Guarantor agrees that this Guaranty may be enforced by the City without the necessity at any time of resorting to or exhausting any other remedy it may have, and Guarantor hereby waives any right to require the City to join any party other than Guarantor in any action brought hereunder or to commence any action against or obtain any judgment against any other party or to pursue any other remedy or enforce any other right. Guarantor further agrees that nothing contained herein or otherwise shall prevent the City from pursuing concurrently or successively all rights and remedies available to it at law and/or in equity, and the exercise of any of its rights or the completion of any of its remedies shall not constitute a discharge of Guarantor’s obligations hereunder, it being the purpose and intent of Guarantor that the obligations of Guarantor hereunder shall be absolute, independent and

unconditional under any and all circumstances whatsoever. None of Guarantor's Obligations under this Guaranty or any remedy for the enforcement thereof shall be impaired, modified, changed or released in any manner whatsoever by any impairment, modification, change, release or limitation of the liability of any party other than Guarantor, or by reason of the bankruptcy of a party other than Guarantor, or by reason of any creditor or bankruptcy proceeding instituted by or against a party other than Guarantor.

5. If: (a) this Guaranty is placed in the hands of an attorney for collection or is collected through any legal proceeding; (b) an attorney is retained to represent the City in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under this Guaranty; (c) an attorney is retained to provide advice or other representation with respect to this Guaranty; or (d) an attorney is retained to represent the City in any proceedings whatsoever in connection with this Guaranty and the City prevails in any such proceedings, then Guarantor shall pay to the City upon demand all attorney's fees, costs and expenses incurred in connection therewith (all of which are referred to herein as "Enforcement Costs"), in addition to all other amounts due hereunder, regardless of whether all or a portion of such Enforcement Costs are incurred in a single proceeding brought to enforce this Guaranty as well as the other documents described in the Recitals hereto.

6. In order to further induce the City to enter into the various transactions described in the Recitals hereto, Guarantor makes the following representations and warranties to the City set forth in this Section. Guarantor acknowledges that but for the truth and accuracy of the matters covered by the following representations and warranties, the City would not have agreed to enter into the various transactions described in the Recitals hereto.

(a) Guarantor is a public corporation duly created and validly existing under chapter 35.21 RCW with full power and authority to execute this Guaranty and perform its obligations hereunder.

(b) This Guaranty was duly and validly authorized, executed and delivered by Guarantor, and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

(c) The execution and delivery by Guarantor of this Guaranty and the consummation of the transactions described herein, do not conflict with or result in a breach of any of the terms, provisions or condition of any agreement or instrument to which Guarantor may be bound, or of any order, law, rule or regulation of any court, governmental body or administrative agency having jurisdiction over Guarantor.

(d) Any and all balance sheets, net worth statements, financial statements and other financial data with respect to Guarantor which have heretofore been given to the City by Guarantor fairly and accurately present the financial condition of Guarantor as of the respective dates thereof.

(e) The execution, delivery, and performance by Guarantor of this Guaranty does not and will not contravene or conflict with (i) any Laws, order, rule, regulation, writ, injunction or decree now in effect of any Government Authority, or court having jurisdiction over Guarantor, (ii) any contractual restriction binding on or affecting Guarantor or Guarantor's property or assets which may adversely affect Guarantor's ability to fulfill its obligations under this Guaranty, or (iii) the organizational or other documents of Guarantor.

(f) This Guaranty creates legal, valid, and binding obligations of Guarantor enforceable in accordance with its terms.

(g) Except as disclosed in writing to the City, there is no action, proceeding, or investigation pending or, to the knowledge of Guarantor, threatened or affecting Guarantor, which may adversely affect Guarantor's ability to fulfill his obligations under this Guaranty. There are no judgments or orders for the payment of money rendered against Guarantor for an amount in excess of \$100,000 which have been undischarged for a period of ten or more consecutive days and the enforcement of which is not stayed by reason of a pending appeal or otherwise. Guarantor is not in default under any agreements which may adversely affect Guarantor's ability to fulfill its obligations under this Guaranty.

(h) All statements set forth in the Recitals are true and correct.

Guarantor hereby agrees to indemnify and hold the City free and harmless from and against all loss, cost, liability, damage, and expense, including attorney's fees and costs, which the City may sustain by reason of the inaccuracy or breach of any of the foregoing representations and warranties as of the date the foregoing representations and warranties are made and are remade.

7. Guarantor covenants and agrees that, until it is released from this Guaranty pursuant to Section 8 hereof, to deliver to the City the following financial information and statements:

- (a) Upon receipt, Guarantor's annual state Audit Report;
- (b) Within 180 days of each fiscal year end, Guarantor's internally-prepared annual financial statements; and
- (c) Within 30 days of adoption, Guarantor's annual budget.

8. Guarantor shall be released from its obligations under this Guaranty only upon the delivery by the City to Guarantor of a written release of Guarantor from its obligations hereunder. Guarantor will not unreasonably withhold such written release if unconditional certificates of occupancy are delivered for each of the Housing Unit, the Commercial Unit and the Garage Unit, and each of such units have been constructed and equipped in accordance with the Plans and Specifications.

9. Any notice required or allowed hereunder shall be in writing and shall be (i) hand-delivered, effective upon receipt, or (ii) sent by United States Express Mail or by private overnight courier, effective upon receipt, or (iii) served by certified mail, postage prepaid, return receipt requested, deemed effective on the day of actual delivery as shown by the addressee's return receipt or the expiration of three (3) business days after the date of mailing, whichever is earlier; addressed to the party intended to receive the same at the address set forth below:

If to the City:                      The City of Seattle  
Seattle Municipal Tower  
700 5th Avenue, Suite 4350  
P.O. Box 94669  
Seattle, WA 98124-4669  
Attn. Director, Finance and Administrative Services

If to Guarantor:                      Capitol Hill Housing Improvement Program  
1406 10th Avenue, Suite 101  
Seattle, WA 98122  
Attn. Executive Director

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

10. This Guaranty shall be binding upon the heirs, executors, legal and personal representatives, successors and assigns of Guarantor and shall not be discharged in whole or in part by the death or the dissolution of any principal in Guarantor.

11. This Guaranty was negotiated in the State of Washington, and delivered by Guarantor and accepted by the City in the State of Washington, which state the parties agree has a substantial relationship to the parties and the underlying transactions embodied hereby. In all respects, including, without limitation, matters of construction of the improvements and performance of this Guaranty and the Obligations arising hereunder, this Guaranty shall be governed by, and construed in accordance with, the internal laws of the State of Washington applicable to contracts made and to be performed in such state and any applicable laws of the United States of America.

12. TO THE GREATEST EXTENT PERMITTED BY LAW, GUARANTOR HEREBY WAIVES ANY AND ALL RIGHTS TO REQUIRE MARSHALLING OF ASSETS BY LESSOR. WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THIS GUARANTY (EACH, A "PROCEEDING"), LESSOR AND GUARANTOR IRREVOCABLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS HAVING JURISDICTION IN THE CITY OF SEATTLE AND STATE OF WASHINGTON, AND (B) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDING BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT ANY PROCEEDING HAS BEEN



BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDING, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. NOTHING IN THIS GUARANTY SHALL PRECLUDE LESSOR FROM BRINGING A PROCEEDING IN ANY OTHER JURISDICTION NOR WILL THE BRINGING OF A PROCEEDING IN ANY ONE OR MORE JURISDICTIONS PRECLUDE THE BRINGING OF A PROCEEDING IN ANY OTHER JURISDICTION. THE CITY AND GUARANTOR FURTHER AGREE AND CONSENT THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY PROCEEDING IN ANY WASHINGTON STATE OR UNITED STATES COURT SITTING IN THE CITY OF SEATTLE AND MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO THE APPLICABLE PARTY AT THE ADDRESS INDICATED BELOW, AND SERVICE SO MADE SHALL BE COMPLETE UPON RECEIPT; EXCEPT THAT IF SUCH PARTY SHALL REFUSE TO ACCEPT DELIVERY, SERVICE SHALL BE DEEMED COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED.

13. Guarantor and the City (by its acceptance hereof) hereby waive any right to a trial by jury in any action or proceeding to enforce or defend any right under this Guaranty and agree that any such action or proceeding shall be tried before a court and not before a jury.

14. Guarantor acknowledges that Guarantor has had adequate opportunity to carefully read this Guaranty and to seek and receive legal advice from skilled legal counsel of Guarantor's choice in the area of financial transactions of the type contemplated herein prior to signing it. Guarantor hereby acknowledges that: (a) the obligations undertaken by Guarantor in this Guaranty are complex in nature, (b) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, and (c) as part of the City's consideration for entering into the various transactions described in the Recitals hereto, the City has specifically bargained for the waiver and relinquishment by Guarantor of all such defenses. Given all of the above, Guarantor does hereby represent and confirm to the City that Guarantor is fully informed regarding, and that Guarantor does thoroughly understand: (i) the nature of such possible defenses, (ii) the circumstances under which such defenses may arise, (iii) the benefits which such defenses might confer upon Guarantor, and (iv) the legal consequences to Guarantor of waiving such defenses. Guarantor acknowledges that Guarantor makes this Guaranty with the intent that this Guaranty and all of the informed waivers herein shall each and all be fully enforceable by the City, and that the City is induced to enter into this transaction in material reliance upon the presumed full enforceability thereof.

15. The parties hereto intend and believe that each provision in this Guaranty comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Guaranty is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Guaranty to be illegal, invalid, unlawful, void or

unenforceable as written, then it is the intent of all parties hereto that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Guaranty shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of the City under the remainder of this Guaranty shall continue in full force and effect.

16. MANDATORY DISCLAIMER: The Capitol Hill Housing Improvement Program is organized pursuant to Seattle Municipal Code (SMC) 3.110 and RCW 35.21.660, 35.21.670, and 35.21.730-.755. RCW 35.21.750 provides as follows: "All liabilities incurred by such public corporation, commission, or authority shall be satisfied exclusively from the assets and properties of such public corporation, commission or authority and no creditor or other person shall have any right of action against the city, town, or county creating such corporation, commission, or authority on account of any debts, obligations, or liabilities of such public corporation, commission, or authority."

EXECUTED as of the date first set forth above.

CAPITOL HILL HOUSING IMPROVEMENT  
PROGRAM, a Washington public corporation

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Christopher Persons, Executive Director

STATE OF WASHINGTON )  
 ) ss:  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that Christopher Persons is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Executive Director of CAPITOL HILL HOUSING IMPROVEMENT PROGRAM, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2012.

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Notary Public in and for the State of Washington,  
residing at \_\_\_\_\_.

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Name (printed or typed)  
My appointment expires: \_\_\_\_\_